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No. 220

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In the Supreme Court of the United States

OCTOBER TERM, 1954

FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF WARREN, APPELLANT

v.

STANLEY J. BOWERS (SUCCESSOR TO JOHN W. PECK), TAX COMMISSIONER OF OHIO

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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OPINIONS BELOW

The entry of the Board of Tax Appeals, State of Ohio (R. 6-17), was not reported. The opinion of the Supreme Court of Ohio (R. 18-21) is reported at 161 O. S. 149.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on March 10, 1954. (R. 31.) An application for rehearing was seasonably filed and was denied by order dated March 31, 1954. (R. 31.) The petition for allowance of an appeal was allowed

June 23, 1954. (R. 4.) This Court, by order of October 14, 1954 (R. 56), noted probable jurisdiction. The jurisdiction of this Court to review the decision below by direct appeal is conferred by 28 U. S. C., Section 1257(2).

QUESTION PRESENTED

Whether the Ohio intangible property tax, which is measured by the capital, surplus or reserve fund, and undivided profits of incorporated savings and loan associations, is void as a tax upon obligations of the Federal Government, since no provision is made for deducting the value of these obligations held by the associations from the measure of the tax, and since the associations, which pay the tax, have no right to be reimbursed.

STATEMENT

Appellant, First Federal Savings and Loan Association of Warren (hereinafter referred to as the Association), is a federally incorporated savings and loan association doing business in Ohio. It issues so-called withdrawable shares to its depositors. (R. 37.) For tax purposes the Ohio statutes define these withdrawable shares as deposits, rather than as shares of capital stock. 4-A Page's Ohio General Code Annotated, Section 5324.

Ohio intangible property taxes totalling $5,702.72 were assessed against the Association annually from 1947 through 1951. (R. 17.) The tax was imposed upon the "capital employed, or the property representing it" in the institution. Ohio Code, Section 5408. It was computed by applying a rate of two mills per dollar against the aggregate of the

Association's capital, surplus or reserve fund, and undivided profits. Ohio Code, Section 5412. In computing this total, no deduction was made for United States Treasury obligations held by the bank among its assets. Had these obligations been deducted, no taxes would have been payable by the Association. (R. 17.)

The taxes were paid by the Association, which, pursuant to state law, then applied to the Tax Commissioner for a certificate abating the assessment. (R. 32-34.) This application was denied by order of the Tax Commissioner, dated July 30, 1952. (R. 34.) A notice of appeal to the Board of Tax Appeals was duly filed by the Association on August 27, 1952. (R. 35.) The Board, by entry dated March 2, 1953, reversed the order of the Tax Commissioner as to the taxes here involved, and remanded the cases with instructions to issue the certificate abating these taxes. (R. 6-17.) The Tax Commissioner appealed this portion of the entry to the Supreme Court of Ohio, which, on March 10, 1954, reversed the decision of the Board of Tax Appeals and affirmed the order of the Tax Commissioner. (R. 18-21.) The court held, one judge dissenting, that the tax was upon the intangible property interests held by the bank's depositors in its surplus, rather than on the bank itself. It, therefore, held the tax valid even though the federal obligations owned by the bank were not deducted from the measure of the tax. It relied for authority on the cases which permit a state to tax the full value of shares of stock in a corporation even though the corporation holds government obli-

gations among its assets. On May 27, 1954, pursuant to the Association's motion, Stanley J. Bowers was substituted as appellee. (R. 31.)

The Supreme Court of Ohio allowed the Association's petition for an appeal on June 23, 1954. (R. 4.) On October 14, 1954, this Court entered its order noting probable jurisdiction of the appeal and invited the Solicitor General to file a brief as *amicus curiae*. (R. 56.)

ARGUMENT

In deciding the issues raised on this appeal adversely to the Association, the Supreme Court of Ohio adopted by reference its opinion in the case of *Society for Savings in the City of Cleveland* v. *Stanley J. Bowers, Tax Commissioner of Ohio*, No. 204, this Term, relying on that opinion as the authority for its action. (R. 19) The Government has filed a brief as *amicus curiae* in that case and believes, for the reasons there stated, that the judgment of the Supreme Court of Ohio here appealed from should be reversed.

Respectfully submitted.

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